In The

SUPREME COURT OF THE UNITED STATES

APR 14 1967
JOHN F. DAVIS, CLERK

No. 1271

ISIDORA SOMOLINOS,

Petitioner Pro se
Box 173
Canóvanas, P. R.

vs

CHARLES M. HITT, ARTHUR ZALDUONDO, ROBERT E. JOSELYN and ROBERT CHILD

Respondents

A Petition of Writ of Certiorari to Review Decree of the Supreme Court of Puerto Rico

1967

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In The

SUPREME COURT OF THE UNITED STATES OF AMERICA

No. ----------

ISIDORA SOMOLINOS, Petitioner

vs.

Charles M. Hitt, Arthur Zalduondo,
Robert E. Joselyn, and Robert Child,
Respondents

To the Honorables, the Chief Justice and the Associate Justices of the Supreme Court:

Petitioner herein, ISIDORA SOMOLINS, **pro se**, respectfully prays that a Writ of Certiorary be issued by this Honorable Court to the Supreme Court of Puerto Rico, a State Appeal Court, to review the final decision of said Court refusing to review in its turn, the Summary Judgement rendered by the Superior Tribunal of Puerto Rico, Chamber of San Juan, on April 20, 1966, in the Civil Case #62-8581, entitled: Isidora Somolinos, Plaintiff vs. Juana Sueca, Charles M. Hitt, Arthur Zalduondo, Robert E. Joselyn, Robert Child and others, for reasons contained in this Petition and expressed as follows:

I- On November 18, 1966 and in Case No. R-66-139 before it and entitled "Isidora Somolinos, Plaintiff and Recurrent vs. Charles M. Hitt et als., Defendants and Respondents, On Review, the Supreme Court of Puerto Rico, Court of Appeals, rendered a decree refusing to review the Summary Judgement rendered by the Superior Tribunal of Puerto Rico, (First Instance) Chamber of San Juan, in the above mentioned Civil Case No. 62-8581 before said Court and Chamber, on April 20, 1966.

2- The said Decree of the Supreme Court of Puerto Rico, dated November 18, 1966, refusing to review, was entered November 21, 1966, and a Certified copy of the Petition and of

decree denying it appear in the Appendix herein, marked **Appendix 1** and **Appendix 2** succesively. A petition for rehearing filed by Petitioner herein on November 21, 1966 and appended herein as **Appendix 3,** was denied by the Court, as per Order of January 23, 1967, reported as entered January 23, 1967 and appended herein as **Appendix 4.**

3-The jurisdiction of this Honorable Court to issue the said Writ of Certiorary asked is invoked under Bill of the 87th Congress, First Session, H.R 70 38- Report No. 683; May 15, 1961 "To eliminate the right of appeal from the Supreme Court of Puerto Rico to the Circuit Court of Appeals for the First Circuit, which reads:

1258- Supreme Court of Puerto Rico; Appeal; Certiorari.

"Final judgement or decrees rendered by the Supreme Court of the Commonwealth of Puerto Rico may be reviewed by the Supreme Court as follows:

(3-) By writ of certiorary where the validity of a treaty or statute of the United States is drawn in question, or where the valitity of a statute of the Commonwealth of Puerto Rico is drawn in question on the ground of it being repugnant to the Constitution, treaties or laws of the United States or where any title, **right,** privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under the United States."

Further, under Rule 21 of the Rules of the Supreme Court of the United States, inasmuch as petitioner herein understands that the Supreme Court of Puerto Rico, as Court of Appeals, in rendering the Decree first, and the Order on Rehearing later, whose review is herein sought, has so far departed from the accepted usual course of judicial proceedings, and/or so far sanctioned such a departure by the lower court, the Superior Tribunal of Puerto Rico, Chamber of San Juan as to call for an exercise of this Court's power of supervision. It is the opinion of the Petitioner herein, that the Supreme Court of Puerto Rico in rendering such decree and order totally ignored the doctrine of Stare decisis, for after ignoring, an specific precept of Puerto Rico's vital Mortgage Law, (Section 34), it ignored also its own jurisprudence interpreting and applying said precept of law, in the case of **Kings vs. Fernández,** 30 Puerto Rico Reports, 550,

all these in prejudice of the constitutional right of Petitioner herein, to **equal protection of the law,** as established in Article II, Section 7 of the Bill of Rights of the Constitution of the Commonwealth of Puerto Rico which reads as follows:

> "The right of life, liberty and the enjoyment of property is recognized as a fundamental right of man. The death penalty shall not exist. No person shall be deprived of his liberty or property without due process of law. **No person in Puerto Rico shall be denied the equal protection of the laws.** No laws impairing the obligation of contracts shall be enacted. A minimum amount of property and possession shall be exempt of attatchment as provided by by law."

Laws of Puerto Rico Annoted, Title I, Art. II, Section 7, Page 180.

As well as in Fourteenth Amendment of the Constitution of the United States which reads as follows:

> Section 1- All persons born or naturalized in the United States, and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Laws of Puerto Rico Annoted, Title I, Constitution of the United States, Article XIV, Page 153.

4- The question herein presented for review by this Honorable Court is wether the Supreme Court of Puerto Rico can ignore a substantive precept of Puerto Rican law, the accepted comments to such precept by reputed local, Latin American and Spanish authors and what is more, **its own cases,** interpreting and applying correctly and in line with such authors, the said precept, all in prejudice of a citizen's constitutional right of equal protection of the laws under the local and the Federal Constitutions.

5- The statute herein involved is Article 34 of the Mortgage Law of Puerto Rico which reads as foliows:

"**Article 34:-** Notwithstanding the provisions of the foregoing section, instruments or constracts executed or entered into by a person who, according to the registry has a right to do so, shall not be invalidated with regard to third persons after they have been recorded, even though the interest of such party should subsequently be annuled or terminated by virtue of a prior deed **which was not recorded** or for reasons which do not clearly appear from said registry.

Only by virtue of a recorded instrument may another later instrument also recorded be invalidated to the prejudice of a third person, with the exception mentioned in Section 731, of this Title.

The provisions of this section shall in no time apply to an instrument recorded in accordance with the provisions of Section 732 of this Title, unless prescription has validated and assured the interest to which said instrument refers." (1)

Laws of Puerto Rico Annotated, Title 30, Section 59, Page 681.

The **foregoing section** to which Article 34 or the Mortgage Law refers, in its openning lines, as quoted, is Article 33 of the said Mortgage Law which reads as follows:

"**Article 33:-** Instruments or contracts which are null under the law are not validated by their admission to record."

Laws of Puerto Rico Annotated, Title 30, Section 58, Page 680.

5- At the Superior Tribunal of Puerto Rico, Chamber of San Juan, Isidora Somolinos, Petitioner herein, filed on December 12, 1962, a Complaint against Juana Sueca, Enrique Biascoechea, Puerto Rico Properties Inc., and others, trying to recover from them a farm of 750 acres of land which had been hers by 1937, with her right duly recorded in the Registry of the Property at San Juan, Puerto Rico, and which she lost to them

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(1) Sections 731 and 732 of Title 30, to which the above refers, do not apply to this specific case but anyhow are quoted as Appendix 9, being lengthly.

thru a contract she now alleged was null and void and sought to invalidate. All defendants in the case, except Juana Sueca filed Motions to Dismiss on the ground that all them were **innocent third persons** as established by Article 34 of Puerto Rico's Mortgage Law and praying that the Complaint be dismissed as to them.

Their Motions were heard by Court and later the Petitioner herein and one of the defendants, **Puerto Rico Properties, Inc.**, filed briefs. It was the main contention of the Plaintiff, Petitioner herein, that none of the codefendants was **innocent third person** as claimed, inasmuch as Article 34 of the Mortgage Law of Puerto Rico, which they invoked intheir behalf **was applicable only to cases in which the party claiming against the alleged innocent third person and trying to defeat his title, did not have his own title recorded in the Registry of the Property,** and Isidora Somolinos, the Plaintiff, Petitioner herein, **did have** her title duly recorded at Page **229** Volume **21** of Loíza, in the Registry of Property of San Juan, Puerto Rico, record Number **171.** In line with that principle, as interpreted in the Case of King vs. Fernández, 30 Puerto Rico Reports 550 and quoted by the Plaintiff, Petitioner herein, in her Brief, the Chamber of San Juan, of the Superior Tribunal of Puerto Rico, dismissed 20 months later the Motions to Dismiss, because to quote the Tribunal's own words: "We do not believe therefore, that the co-defendants, who obtained their titles from Juana Sueca, whose title was null, can be considered third mortgagees as against the plaintiff who seeks invalidation **in virtue of a previous title, duly recorded".** A complete transcription of the lower court's Decree on this point is made in Paragraph 1 of the Petition before the Supreme Court of Puerto Rico, of Petitioner herein, and appended as Appendix 1.

After this, the Plaintiff Isidora Somolinos amended her complaint before the Chamber of San Juan, of the Superior Tribunal of Puerto Rico, but only to the effect of including as new parties the co-defendants Charles M. Hitt, Arthur Zalduondo, Robert E. Joselyn, and Robert Child (all four as a single group and respondents herein) together with some other new parties. All co-defendants, the old ones and the newly brought into the case, in answering, filed again Motion to Dismiss against the Amended Complaint, on the ground again that they were **innocent third persons** as per Article 34 of the Mortgage Law of Puerto Rico. The Tribunal set the Motions for hearing on Octo-

ber 22, 165. On that date, the co-defendants Hitt and his group, respondents herein, prayed and obtained that the Court consider their Motion to Dismiss as a Motion on Summary Judgement, and as such it was submitted with briefs. And on April 20 1966, **without reversing its former ruling that the defendants were not innocent third parties inasmuch as Isidora Somolinos who was challenging their title, had "a previous title (to the land) duly recorded"**, the Superior Tribunal of Puerto Rico Chamber of San Juan, entered a Summary Judgement declaring Charles ,Hitt and his group innocent third persons in the case. Appendix **5** herein.

On April 27, 1966, Petitioner herein filed a Petition for a Writ of Review of said Summary Judgement, before the Supreme Court of Puerto Rico, Appendix **1**, and this dismissed the Petition on November 18, 1966, as per decree of the date. Appendix **2**. A petition for re-hearing, Appendix **3**, was dismissed as per Order of January 23, 1967. Appendix 4. It is the review by Certiorarii of Supreme Court's Decree and Order, and of Superior Court's Summary Judgement, Appendices 2, 4 and 5 that we are now praying from this Honorable Court. It was before the Supreme Court of Puerto Rico, in her Motion for Re-hearing that the Petitioner herein raised the question of the violation of her constitutional right of equal protection of the law. (Puerto Rico Constitution, Article II, Section 7, and Federal (United States Constitution) Amendment XIV). A certified copy of the Motion is appended as Appendix **7.**

As only a question of law was involved in all proceedings before the lower court and the state apellate court there is no record necessary in this case.

ARGUMENT

The right of a Portorrican citizen to **equal protection of the law is** one guaranteed him both by the Constitution of Puerto Rico and by the Constitution of the United States of America. Said recently the Supreme Court of Puerto Rico with respect to this right:

> "If they (the laws) make no distinction, we lack faculty to distinguish. We would not get lost in the labyrinth of unjust distinctions. In their interpretation and application, the basic principle of human equality before

the laws, should be the lighthouse to guide us in man's most honorable, but at the same time most ungrateful of journeys: that of making justice to his fellowmen. Equality for the old and for the child in receiving their part in the enjoyment of any substantive right; equality for all in the judicial treatment before the adjective law in any process of social or patrimonial revindication."

Ocasio vs. Díaz - Judgement of the Supreme Court of Puerto Rico of June 27, 1963.

This should have been the treatment given this sexagenarian widow, petitioner herein, but she justifiedly fears that the gigantic economic and political forces she has found herself suddently and unexpectedly fighting with, might prove too much for her and might crush her alleged right in the maelstrom of their big interest, unless this Court comes to her assistance exercising its power of supervision over the insular Supreme Court.

Let petitioner explain. The 750 acres of swampy land she is trying to recover through Civil Case No. 62-8581, before the Superior Tribunal of Puerto Rico, Chamber of San Juan, cost her and her husband on 1927, only $30,000.00. 600 acress of these are today held by Puerto Rico Properties Inc., a co-defendant in said Civil Case No. 62-8581 above mentioned and whose President is Mr. Louis Puro. Just recently, The San Juan Star, a diary of San Juan, Puerto Rico published a front page article entitled "$100 Million North Shore Project Planned" which reads in part as folows:

> "Plans are being mapped by government and private industry leaders for a $100 million development of low-lying, swampy lands stretching east from Boca de Cangrejos to Río Grande de Loíza, it was learned yesterday.
>
> The project would take in about 10,000 acres bounded on the north by the ocean and on the south by 65th Infantry Highway.
>
> Initial work involve drainage and channel-cutting and the creation of three 18-hole golf courses in the area.
>
> Later development would bring in new hotels, motels, industries, highways, condominiums, commercial and resi-

dential projects and a large marina to the underdeveloped area.

Flood control and highways access problems are being discussed with the Planning Board by a Coordinating Commitee that includes legislative and municipal officials and heads of private corporations with land holdings in the area.

"This is strictly in the planning states," said **Louis Puro,** chairman of the board of El San Juan Hotel Corp., and president of Puerto Rico Properties, Inc., a corporation with land in the **target** development area.

Among the Commonwealth and municipal entities taking part in discussions with private sector leaders are the Puerto Rico Industrial Development Co. (Pridco), the Urban Renewal and Housing Corp. (URHc), the Department of Tourism, the Public Works Department, The Planning Board and the municipalities of Carolina and Loíza.

Private interests include members of corporations that would build new tourist facilities, three championship 18-hole golf courses, flood control an drainage facilities including a mayor channel leading to the sea, and preferential relocation housing for families now living tn the area.

"This won't happen overnight. We want to work very closely with Commonwealth agencies to come up with the very best development of the area" Puro said yesterday. "It's a multi-million dollar project..from $75 Million to $100 Million. I'd say $100 million when you consider the investments that are going to be attracted into that area once it's developed," he said.

These private and public interests in the land petitioner herein claims to be hers, no matter how big however, should not be a detterrent to the application of existing laws, to determine wether petitioner is right in her claim or not. Else it would constitute a violation to her constitutional right to the equal protection of law. And no doubt that the law, in theory and in practice, and the jurisprudence interpreting that law are on her part.

The Law:-

Article 34 of the Mortgage Law of Puerto Rico reads as follows:

> "Notwithstanding the provisions of the foregoing section, instruments or contracts executed or entered into by a person who, according to the registry has a right to do so, shall not be invalidated with regard to third persons after they have been recorded, even though the insterest of such party should subsequently be annuled or terminated by virtue of a prior deed **which was not recorded of for reasons which do not clearly** appear from said registry.
>
> **Only by virtue of a recorded instrument may another later instrument also recorded be invalidated to the prejudice of a third person,** with the exception mentioned in Section 731, of this Title.
>
> The provisions of this section shall in no time apply to an instrument recorded in accordance with the provisions of Section 732 of this Title, unless prescription has validated and assured the interest to which said instrument refers."

Laws of Puerto Rico Annotated, Title 30, Section 59, Page 691.

The Authors:-

On matter of the **third mortgagee** or innocent third person, says Professor Luis Muñoz Morales, a Puerto Rican author frequently quoted by our Supreme Court:

> "On examination of article 34 of our Law of 1893 we find that its equivalents in the Spanish Laws of 1869 and 1877 and the last of 1909, as well as the Puerto Rican of 1880 contain the requisite of the notification of the recording to those who, during the proceeding 20 years were in possession, according to the records, of the same immovables and who have not established claims against it in the term of 30 days."

"These modifications are extensevely explained by the author Galindo in his text above quoted, Volume 2, pages 511-520, numbers 3, 4 and 5; Morell refers also to them (text quoted,

Vol. 2, pages 606 and 616) and we make now reference to those modifications as a historic precedent and as information to students, **but as of today, we must attain to the text of our law of 1893** which with but a small variance is the same as its equivalent the (Spanish) law of 1861.

"The effect that the general declaration of article 33 should produce as to third persons, appears exposed **as an exception in article 34,** and thus it appears that this general rule is applicable when the title continues in the same person who recorded the null act; and thus, if the act or contract is declared null, the record of its inscription is also anulled, as if it had never existed; recording did not convalidate the null act, on the contrary, the nullity of the act or contract carried with it and determine the nullity, or more still, the cancellation of its inscription.

But if, before said nullity is declared, the owner with his title duly recorded, disposes of his right or encumbers it in favor of a third person who also records this transmission or encumbrance then **this third acquiring party gets guaranteed in his right and can not be prejudiced by the claim or by a posterior invalidation of the title of the one from whom he obtained his, so long as the following circumstances concur:**

a- That the invalidation of the act or contract of the one from whom he obtained his title and **the cancellation of his record be originated by a not recorded title.**

b- That the causes of anullement do not appear clearly from the Registry.

Within those circumstances it is understood that the acquisition was made in good faith and from a person who, from the record appeared with a right to convey, and thus the one acquiring has the condition of a legal third person.

The first circumstance is corroborated **a contrario sensu** in the second paragraph of the same article when it declares that **only in virtue of a recorded instrument may another later instrument also recorded be invalidated to the prejudice of a third person with his posterior title also recorded.** It follows then that if the anterior instrument or title which originates the claim of invalidation is not recorded, it can non prejudice the third person who posteriorly recorded his instrument.

The Cuban Professor Dr. Dorta Duque analyzing the content of Article 34 of the Mortgage law of Cuba (exactly the

same as that of Puerto Rico) fixes in six the requisites integrating it, to wit: (1) Acquisition of a real immovable right by a third person. (2) That this third person acquires his title from a person who, from the records appears with right to convey. (3) That the cause of invalidation, rescision or resolution do not clearly appear from the record. (4) That the third person have his title recorded. (5) That said third person acts in good faith. (6) **That the invalidation that might be declared be not in virtue of an anterior recorded title.**

"With reference to the modifications previously indicated, we observe that our article 34, following the precedent of the Law of 1861, refers to **third persons** which word in the posterior Spanish laws and in the one which was in force in Puerto Rico Sience 1880 (Article 42) as well as in the modern Spanish Law of 1909, is subsituted by the phrase "as refers to those who with it may have transacted through an onerous title."

"We must bear in mind that the said laws (Spanish) contain another requisite absent in ours; the notification to anterior owners. The authors comment on both modifications and we should know them but for the sake of information, since they do not figure in our instant law.

"The third person referred to in article 34 is that one who acquires from a person who from the record appears with right to transmit; is that one who took no active part in the act or contract which was invalidated; is the one who having acquired title, recorded his right; is the one defined in article 27; and are also third persons the succesive owners, but all must found their right on a recorded title in order to have a right to the benefit or exception of article 34, under the supposition or condition that the cause of nullity does not clearly appear from the invalidated record.

"The Supreme Court of Puerto Rico in the Case of King vs. Fernández (30 DRR 592) declares that **a third person can not claim the protection of Article 34** of the Mortgage Law even though he has acquired from whom from the records figured as owner, and even though he has recorded his title, **when this is invalidated in virtue of another, previously Recorded in the same registry**". (All emphasis, our owns).

Luis Muñoz Morales - Lecciones de Derecho Hipotecario, Vol. 1, pages 261-263.

It is clear and evident then, that Article 34 of the Mortgage Law of Puerto Rico, "rather than benefiting, **prejudices**" a party who claims the defense of **innocent third party** against one who claims nullity of his title, **with the claimant's title also recorded.**

The Precedent:-

The precedent on this point is clear in Puerto Rican jurisprudence. Said the Supreme Court of Puerto Rico as far back as May 31, 1922, in King vs. Fernández, interpreting Art. 34:

> "But the defendants allege that they are third persons and invoke article 34 of the Mortgage Law and the decision of this court in Ayllon et al v González te al, 28 DPR, 61.
>
> In Ayllon Case there was a different legal situation, and as far as article 34 of the Mortgage Law is concerned, its own language shows that instead of favoring it prejudices the position of the defendants.
>
> Article 33 of the Mortgage Law lays down the principle that acts or contracts which are null and void under the laws are not validated by their admission to record and article 34 **limits** the scope of that principle by providing that "instruments or contracts executed or entered into by a person who, according to the registry, has a right to do so, shall not be invalidated with regard to third persons after they have been recorded, even though the interest of such party should subsequently be annuled or terminated by virtue of a prior deed which was **not recorded** or for reasons which do not clearly appear from said registry." (Italics volunteered).
>
> **It may be admitted that the defendants are third persons** and that they acquired from one who appeared to be the owner according to the registry (Ramón Aragunde), **but as their title is annulled by virtue of prior titles** (Torres Grau and Catlin) **which were recorded in the registry, the principle of said article 33 must govern absolutely."**

King vs. Fernández 30 DPR Reports, 550, Pages 559-560.

Note that the tribunal, of its own, accepts the possibility that the party be **a third person**, and that he acquired from one with his tiele recorded, but, "as their title is annulled by virtue of prior titles which were recorded in the registry, the principle of article 33 must govern absolutely".

The key point here then is not really wether the one whose title is challenged, is, or is not a third person.... He may be one, on the words of the Supreme Court of Puerto Rico; the key point, the **gist** of the question is wether the claimant against him **has his title recorded** or not. **If it is recorded**, article 34 rather than benefiting, prejudices him, to quote the tribunals own words.

In our opinion, all that petitioner herein had to do before the Superior Tribunal of P. R., Chamber of San Juan in caso No. 62-8581 to defeat the defense of innocent third party raised by the defendants in the case, **was to prove that her title was duly recorded. This she did**, as set forth by the own Superior Tribunal in its Resolution of Feb. 9, 1965, when it dismissed the Motion to Dismiss of co-defendants on the ground that "We do not believe, therefore, that co-defendantes who acquired from Juanita Sueca, whose title was void, can consider themselves third mortgagees against the plaintiff, who prays invalidation in virtue of an anterior title duly recorded." (Appendix 1, Paragraph 1).

The question now is: Why did the Chamber of San Juan 14 months later ruled in its Summary Judgement of April 20, 1966, without even making reference to its previous ruling that Charles M. Hitt and his group, were **third innocent party**, if the situation had not changed, if the challenge to the group's title was still being made **by one who had her title previously recorded?** Why did the Supreme Court of Puerto Rico refuse to review this Summary Judment, ignoring the law and its own jurisprudence, favorable to Petitioner? The answers to these questions might be found in the Article of the San Juan Star herein quoted, Appendix 8. Perhaps the interest of the sexagenarian widow without means even to hire an attorney to appear before this High Tribunal on her part, has been deemed too small and insignificant in front of the vital interests of The Commonwealth of Puerto Rico and its agencies Puerto Rico

Industrial Development of Tourism, Public Works Department, Planning Board, Municipality of Carolina and Municipality of Loíza, and Private interest headed by Mr. Louis Puro and his Puerto Rico Properties Inc., and other corporation and influential individuals.

The Supreme Court of Puerto Rico is clearly wrong as of late in its application of Article 34 of the Mortgage Law. And this has been clearly pointed out to the Tribunal by none other that one of its own Associate Justices, Hon. Emilio S. Belaval, in perhaps the most brilliant dissenting opinion ever delivered in that court. To Mr. Belaval's dissenting opinions his Tribunal sometimes refers in the following fashion:

> "But in the face of the parsimonious judgement in this case (Miranda vs. Cuesta 77 P. R. Reports) we top with the luminous dissenting opinion of our fellow judge of this Tribunal, Mr. Belaval."

Ocasio vs. Díaz - Judgement of the Supreme Court of Puerto Rico, of June 27, 1963.

Let's hear then Judge Belaval on the erroneous application by his Court, of Article 34, of our Mortgage Law under review. **Izquierdo v Izquierdo 80 P.R.R. 68:**

COPY FROM THE BOOK

MR. JUSTICE BELAVAL, dissenting.

I do not agree on one point of the issue in controversy herein—the convalidation by the admission to record of the title of the Lutheran Church, which is decided by applying the case of Pérez v. Cancel, 76 P.R.R. 625,633-34 (Marrero, 1954). When the case of Pérez v. Cancel, supra, was decided, I dissented as to the pronoucement made therein to the effect that, when a title has been found to be null and void, the subsequent acquirers appearing from the Registry of Property must not suffer the effects of the nulity. Using the classical phrase of León Galindo y de Vera, "Registration is not water of the Jordan which blots out every stain, nor can the Registrar who does not hear the adverse party and decides by his own judgment without knowledge on maly occasions, substitute the courts, making irrevocable decisions on the permanent interests

of society." 2 Galindo Vera y Escosura 487 (ed. by Establecimiento Tipográfico de Felipe Pinto y Oravio, 1896). **Since this is the second time that I am forced to dissent on this matter,** I wish to formulate in writing my objection to that reasoning, lest this second dissent be considered as whimsical or extravagant use of the autonomy enjoyed by the judges of this Court to formulate, separately, their objections to the ruling of the majority.

The error which we have committed in the past consists in having applied the Spanish jurisprudence corresponding to the Spanish Mortgage Law, after its various reforms, to the Puerto Rican Mortgage Law which, for that matter, is still identical with the Spanish Mortgage Law of 1861 which was extended to the Overseas Provinces. Let us consider first the table of analogies and dissimilarities:

Follows a comparison, in table from of Article 34 in the Spanish and in the island's Mortgage law.

"Having examined all the changes undergone by #34 of the Spanish Mortgage Law, we see how the original principle of 1861, "that which is recorded is not invalidated by that which is not recorded" —Gómez de la Serna, op. cit. at 622—is gradully transformed legislatively, in favor of an absolute registral faith, but surrounded by a series of requirements which are actually a system of guaranties for all interests involved. In order to validate that which has been subsequently recorded as against that which was previously recorded, the amendement of 1869 requires that notice be given to all persons who during the past twenty years shall have held the possession, according to the Registry. The reform of 1877 substitutes the concept "acquirer by onerous title" for that of "third person", and limits the effects of the record and notice as to acquirers without good consideration, grantees, heirs, etc. The reform of 1909 merely refers to the record of properties purchased from the State, which could not be annulled after the expiration of the fifteen-year period by reason of excess area or for other causes. The amendment of 1944-45 again restores the concept of third person, but only a third person in good faith; preserves the limitation as to the acquirers without good consideration; restores the validation of the record by the system of notices; and

declares that the acquisition shall stand against causes of nullity which do not appear from the Registry itself. We regret not to have time to elaborate on the concepts of "registral inaccuracy" and "third person in good faith" used in the latest Spanish amendment.

As to the actions of nullity, which is now our concern, it is clear that, according to the Spanish law of 1861, a later record could be annulled to the prejudice of a third party, provided (1) that the title on which the action of nullity was based had been previously recorded, or (2) that the cause of nullity clearly appeared from the Registry. As rightly stated by Roca Sastre, op. cit. at 436, both things were the same "with no other change than the addition of causes of nullity (or resolution) to the concept of unrecorded titles. Therefore, #34 of the Mortgage Law of 1861 was but a mere application of the basic rule that that which is not recorded does not prejudice a third party, no matter how strictly this rule is interpreted (5)-(5) in other words, that the record of a valid title was sufficient for the nullity of a title subsequently recorded to affect a third acquirer, despite the fact that such nullity did not clearly appear from the Registry."

An examination of our #34, in the light of its true historical precedents and its present legislative scope, as it is always our duty to do so, shows that **the only protection provided by #34 of our law to a subsequent acquirer is the one contained in the classical maxim of Gómez de la Serna, "that which is recorded is not invalidated by that which is not recorded."** Gómez de la Serna, op. cit. at 622. This element of registral compulsiveness gains emphasis if we bear in mind that the purpose of the Puerto Rican Mortgage Law of 1893 was to compel the registration of titles to secure more strongly the territorial credit.

Based on this rule—**that which is not recorded does not prejudice and that which is previously recorded prejudices that which is subsequently recored**—the Legislature of Puerto Rico has not deemed it advisable, as did the Spanish reform of 1869, to adopt the procedure by virtue of which a void title is convalidated by means of service, or to establish any distinction as to nullity between acquirers by an onerous title and acquirers without good consideration, as was done by the Spanish reform of 1877,

or to declare the validation of a recorded null title as against a previously recorded title as to a third person, as was done by the Spanish reform of 1944-45, or to provide compensation by the State to the prejudiced previous owner suggested for the most recent Spanish reform. The Legislature of Puerto Rico, on the contrary, has deemed it advisable to maintain the balance between the civil sphere of nullity and the registral sphere of nullity, it has liberalized the registration with curable defects which, to a certain extent, is an authorization of the registral inaccuracy.

Thus, the present state of the Puerto Rican law is the same one which prevailed in Spain in 1861, which provides, as Roca Sastre says at pp. 439 and 430 of his work supra, "that under the Mortgage Law of 1861, a third party who asquired a title from the record owner by virtue of a null conveyance, even if the third party acquired title in good faith and by onerous title and recorded its acquisition, forfeited the latter as a result of the successful filing of an action for nullity based on a former recorded title, regardless of whether this invalidating possibility was not shown or revealed in any manner whatever by the Registry. To better understand the scope of the commentaries, we shall copy from some of the previous pages of the same work the following analysis of the mortgage legislation of 1861: "Taking the more positive view that the recorded titles were effective against or as to third parties, the law-makers of 1861 deemed it necessary to determine that these effects were not produced if the recorded title was void, and for that reason they included #33 in the Mortgage Law, the contents of which were almost identical with those of #33 of the present law. Section 34 of the Mortgage Law of 1861 gave the impression of being an exception to #33 supra, for its first words being 'notwithstanding the provisions of the foregoing article,' it seemed intent in protecting at any cost a third party who acquired from the record owner, even though the latter had become such owner by virtue of a null conveyance; but in fact it was not so, at least normally, that is, when there were two records of conveyances made prior to the registration of such null title, so that if the record owner, according to the preceding record, requested successfully in court that such title and its

registration be declared void, such nullity carried with it the acquisition of the third party, no matter whether he had acquired by onerous title and in good faith, according to the provisions of the second paragraph of said #34. . . . This provision protected only a third acquirer whenever the title of its transferor was annulled by virtue of a previous title not recorded or for causes which did not clearly appear from the Registry, but this protection was ultimately the same as the one obtained by appliying #32 (then #23), with no other change than the addition of causes of nullity (or resolution) to the concept of unrecorded titles. Therefore, #34 of the Mortgage Law of 1861 was a mere application of the basic rule that that which is not recorded does not predujice a third party, no matter how strictly this rule is interpreted."

That this was the reason and prevailing interpretation of #34 of the Mortgage Law of 1861, according to Roca Sastre, "is evidenced by the fact that the mortgage reform of 1869 did not modify this precept for the purpore of clarifying it, but altered it substantially by introducing the important and original measure of service." (Footnote 2, p. 436.)

Reviewing the commentaries of Gómez de la Serna concerning the Act of 1861, Roca Sastre further says (footnotes 4 and 5, pp. 436, 437): "In providing that only by virtue of a recorded instrument may another instrument, also recorded, be invalidated to the prejudice of a third party, **the second paragraph of #34 implicity recognizes that a previously recorded title is not invalidated by a subsequently recorded title which is not legitimate for this purpose.** As to those whose title is recorded, the common law determines the respective value of their titles. **Where a person who learns from the Registry of the existence of previous titles fails to inquire into the legitimacy of the acquisitions of others and his own, he has but himself to blame;** the law protects against that which can not be learned, but not against that which through negligence he fails to investigate when he has the means to do so. Everything is part of the same thought, which may be formulated in the following terms: what does not appear from the Registry can not prejudice a third party... In other words, that the record of a valid title was suf-

ficient for the nullity of a title subsequently recorded to affect a third acquirer, despite the fact that such nullity did not clearly appear from the Registry. That is to say, that the lawmakers of 1861 had an overly limited idea of the registral publicity, for if such publicity provides that nothing which does not appear from the Registry shall not prejudice a third party acquiring in good faith and by onerous title, it is evident that in the case of a recorded null title the element to be published or notified to third parties is not the title element, but the fact of its nullity."

If, as shown, the facts, the law, the authors, the precedents and even the opinion of illustrious judges in the same appeal tribunal are on the part of the widow, Petitioner herein, believes that nothing, not even the great interests now moving in the area she claims as hers, should have barred the Supreme Court of Puerto Rico from reviewing the Summary Judgement of the Superior Court of Puerto Rico, Chamber of San Juan and setting it aside, in recognition of the right of the widow.

Petitioner believes in good faith that if the Writ of Certiorari herein sought, be not issued, the errors made by the Supreme Court of Puerto Rico and in its turn by the Superior Tribunal of Puerto Rico, Chamber of San Juan, will prevail, which would mean to her, the total loss of her right, since under the Summary Judgement entered, 37 more of the co-defendants in the original complaint would have a right to dismissal of same as to them. April ----, 1967.

ISIDORA SOMOLINOS
c/o Box 173
Canóvanas, P. R.
PETITIONER.

VERIFICATION

I, ISIDORA SOMOLINOS, of lega age, widow and resident of San Juan, Puerto Rico, under oath do say and declare:

That my name and other personal circumstances are as above stated; that I am the Petitioner herein; that I have had the preceeding Petition read and translated to me and all in it alleged is true to the best of my knowledge and belief, and known to me of personal knowledge or from information and belief I believe to be true, and I FURTHER UNDER OATH AL-

LEGE: that on this date I have had deposited in the Post Office of Canóvanas, Puerto Rico, of the Post Office Department of the United States of America, two elosed envelopes, with First Class Postage prepaid by me, certified, with return receipt requested, all paid by me, both and each of said closed envelopes containing an exact copy in printing, of the foregoing Petition, and addressed, one of them to

CLERK,
Supreme court of Puerto Rico
San Juan, Puerto Rico

and the other to

Lcdo. Jorge Souss (Counsel for Respondents)
Post Office Box 3992,
San Juan, Puerto Rico

there existing less than 500 miles from Canóvanas to San Juan Puerto Rico.

Canóvanas, Puerto Rico,
April ____, 1967.

Isidora Somolinos
Box 173
Canóvanas, P. R.

Affidavit No. ----------

Sworn to and suscribed befor me by Mrs. Isidora Somolinos, of legal age and resident of Santurce, Puerto Rico to me personally known, at Loíza, Puerto Rico, this ____th day of April, 1967.

R. R. Rivera Correa
Notary Public
(Commissioned for life)

APPENDIX I

IN THE SUPREME COURT OF PUERTO RICO

ISIDORA SOMOLINOS,

Plaintiff and
Apellant.

vs. Case No. R-66-139

CHARLES M. HITT, ARTHUR ZALDUONDO, ROBERT E. JOSELYN AND ROBERT CHILD,

Defendants.

On:

And

THE SUPERIOR TRIBUNAL, CHAMBER OF SAN JUAN, HON. WILFRIDO ROBERTS, JUSTICE,

REVIEW

Appellees.

PETITION

To the Hon. Tribunal:

Now comes the Plaintiff-appellant through her undersigned attorney and respectfully alleges:

1- That in Civil Case #62-8581 before it, and entitled Isidora Somolinos v Juanita Sueca et als, on Inexistence of Contract and Revindication, the Hon. Superior Tribunal of Puerto Rico, Chamber of San Juan, through its Justice Hon. Wilfrido Roberts, entered, on February 9, 1965 the following Resolution, which was not recurred of by the affected parties and which transcribed reads as follows:

RESOLUTION

Claiming that the contract through which she conveyed through instrument #129 of October 19, 1935 before Notary Public Julio César González to Dr. Emilio Alfaro Díaz a finca of 750 Cuerdas in Ward Torrecilla Baja of

Loíza, was null and void because of simulation, Plaintiff Isidora Somolinos asks for a declaration of nullity to the effect in this case, with devolution of the finca to her, previous devolution by her of the sum paid, to the buyer in the alleged contract. The complaint was directed against the components of the Conjugal Partnership which effected the transaction with the plaintiff, Mr. Enrique Biascoechea and Mrs. Juana Sueca; against Dr. Emilio Alfaro Díaz; and against the current owners of the finca, which has been lotified, and the creditors of these.

Motions to Dismiss were filed by co-defendants P.R. L. Estades Inc., P. F. Z. Properties Inc., and Dr. E. D. Maldonado Sierra through their attorneys Fiddler, González and Rodríguez; by Juana Sueca, Luis E. Biascoechea, Eduardo Biascoechea and Manuel I. Vallecillo, through their attorneys Brown, Newson and Córdova and Victoria Capella through her attorney Lcda. Estrella García Capella. The motions to dismiss were set for hearing and to the same appeared the plaintiff and the following co-defendants: P.R. Estades Inc., P.F.Z. Properties Inc., Dr. Maldonado Sierra and Victoria Capella, Esq. motioned for dismiss of the complaint claiming that her client was **third mortgagee**, in virtue of the precept contained in article 34 of the Mortgage Law. The appearing parties argued in favor of their respective points of view. R. R. Rivera Correa, Esq. for the plaintiff asked for a term of 15 days to file a brief and the Tribunal granted the term to all parties for simultaneous filing of briefs. Only the plaintiff and the co-defendants P. R. F. Estates Inc., P. F. Z. Properties Inc., and Dr. Madonado Sierra filed theirs.

These are facts expressly alleged in the complaint in this case: that the plaintiff Isidora Somolinos was owner (with her fight recorded in the Registry, in page 229 of Volume 21 of Loíza), of a rustic finca of 750 cuerdas, in Ward Torrecilla Baja, of Loíza; that this finca, from its origin was subject to a mortgage of $20,000.00 already due since the year 1935; that on that years the mortgage creditors sued through the proceeding of a summary foreclosure for recovery in Civil Case No. 23783; that Enrique Biascoechea having special interest in the finca, called on its owner and signaling her the risks she ran of losing the same induced her to sell it to him for $1,000.00 to be paid

her in three months, plus the amount of the mortgage being foreclosed, plus $1,775.00 that he would keep for payment of other debts affecting the finca; that induced by the great fear insinuated by Biascoechea, Isidora Somolinos agreed on selling him the 750 cuerdas, under the conditions imposed by him; that through public deed #129, of October 19, 1935 before the Notary Public Mr. Julio César González (recorded later at page 194, Volume 28 of Loíza, finca No. 171) the agreed sale was made, but with Enrique Biascoechea making the conveyance figure, not to his name, but to the name of a friend of his, unknown to the plaintiff and named Emilio Alfaro Díaz who limited himself to sign the instrument as the buyer, without paying any sum to the seller, either entering in possession of the finca (of which actually Enrique Biascoechea entered in possession); that by public deed #6, dated January 15, 1938, before Notary Public Julio César González, recorded at page 194, Volume 28 of Loíza, Emilio Alfaro Díaz conveyed the finca in simulated sale to Enrique Biascoechea, married to Juana Sueca, for price of $9,000.00 value received, plus $1,775.00 which the buyer kept for payment of debts; that having divorced later Enrique Biascoechea and his wife, the 750 Cuerdas finca was assigned to her in partial payment of her ganantials, which she divided and sold in lots to the defendants in this case, who at present hold them, with their right recorded in the Registry.

If these facts as alleged in the complaint are accepted as true, the complaint without doubt, contains facts which justify granting a remedy and the dismissal requested should not be granted. Let's take a look:

> "For the purpose of the motion to dismiss, the allegations of the complaint must be taken as true. Boulón v Pérez 70 PRR 941; Secretary of Labor v Bird 78 DPR 161: Sacarelo v Retirement Board, 75 DPR 253; González v Hawayek 71 DPR 493, 494."

Izquierdo v Izquierdo 80 DPR 68,75

In Roig Commercial Bank v Portela, 52 DPR 647, 653, said our Supreme Court:

> "In the case of Hibernia Bank and Trust Co., v Louisiana Avenue Realty Co. 143 La. 962, 79 S. 554, 556, the Supreme Court of Louisiana said:

"If we now consider the exceptions in so far as they affect plaintiff's secondly declared ground of action, namely that the so called sales and transfers are mere shams and simulations, it is evident that said exceptions are not sustainable under our law. A simulated contract is one which, though clothed in concrete form has no existence in fact and is only a myth. It may at any time and at the demand of any party in interest be declared a sham and it may even be ignored by creditors of the apparent vendor."

(In English version 52 PRR 626, 632).

In the case of Monserrate v López 80 DPR 491, 501, said our Supreme Court:

"It is clear that we have before us a plain case of absolute or radical nullity of a contract of sale for lack of consideration, absence of price, and lack of judicial effect as to its transmissibility. Guzmán v Guzmán; Rodríguez, Int., 78 DPR 640, 644, (1955). The fact that a person who is undoubtedly guilty of the cause of nullity of the contract request its annullment should not stand in the way of our reasoning."

In English versión 80 P.R.R. 476

Co-defendants P.R. Estates Inc. and P.F. Properties, Inc., in their Brief bring forth the question that the complaint "do not expose in detail, as required by Rule 7.2, the circumstances which constituted the fraud" alleged in Paragraphs 10, 11 and 12. Their reasoning is correct, but, though the complaint contains in effect allegations of fraud, it does not rest exclusively on these allegations of fraud, but also on the allegations of inexistence of the contract because of simulation, which by themselves are sufficient, to constitute a valid and sufficient cause of action.

The complaint alleges that the co-defendants obtained their respective condominiums from Juana (Know as Juanita) Sueca; and that she acquired the immovable in payment of her participation, on dissolution of the conjugal partnership that existed between her and her ex-husband Enrique Biascoechea. But the complaint expressly alleges that:

"17 The contract by Emilio Alfaro Díaz appeared to buy from Isidora Somolinos the finca in this case as

referred to in paragraph 12 of this complaint as well as the other one by which the co-defendant Enrique Biascoechea and his wife Juanita Sueca pretended to acquire it from Emilio Alfaro Díaz, as referred to in Paragraph 15 of same, were simulated and fraudulent", and since they lack the elements of consent and consideration they are therefore nonexistent."

Thus we can see that Enrique Biascoechea, and as consequence, his wife Juanita Sueca, had knowledge of the cause of nullity which invalidated their title over the immovable. We do'nt believe, therefore, that the co-defendants, who obtained their titles from Juana Sueca, whose title was null, can be considered third mortgagees as against the plaintiff who seeks invalidation in virtue of a previous title duly recorded.

Now, as respects to co-defendants Eduardo Biascoechea and Manuel I. Vallecillo, the complaint does not state facts determining a cause of action against them, since we find no allegation connecting them with the facts on which the complaint, is based. The complaint, as to these two defendants is dismissed, without predujice of an amended complaint, if the complaint were susceptible of amendment.

As to the other co-defendants, the Motions to Dismiss are denied and they are given a term of 10 days to answer the complaint.

Notify.

San Juan, P. R., February 9, 1965.

(Signed) Wilfrido Robert
Superior Justice

2- That the Complaint herein was on a rustic property (finca) of 750 cuerdas at Loíza, which at the time of its filing had been divided into 20 lots now held by so many owners, and for the sake of simplicity, the relation (list of lost into which the main property had been divided), the description of each lot, and who were their owners, was not stated directly in the complaint, but in separate document entitled **ANNEX I** which was made part of the complaint.

3- That after entrance of the transcribed Resolution, the Plaintiff prayed and obtained permission from the Hon. Tribunal to file an Amended Complaint **to the only end** of eliminat-

ing various co-defendants, who as it now appeared from the record, had sold their lots to third persons before the original complaint was filed, and to include as parties, the new owners as well as some creditors, owners or mortgages affecting the lots, changes which were made in the Annex 1, with the original complaint, now called Amended Complaint, remaining in fact in its body.

4- That the complaint amended, all co-defendants filed again Motions to Dismiss, and specifically the recurred herein Charles M. Hitt, Arthur Zalduondo, Robert E. Joselyn and Robert Child, who in the hearing of October 22, 1965 prayed and obtained from the Hon. Tribunal "that their Motion to Dismiss be considered to all effects as a Motion Praying for a Summary Judgement".

5- That the point was submitted with briefs from the parties and solving the same the Hon. Justice Roberts entered on April 20, 1966 a Summary Judgement reported to the parties on the 26th of the same month and year and which copies to its letter reads as follows:

PARTIAL SUMMARY JUDGEMENT

In accord with the stage of the pleadings and considering the documental evidence offered by the parties in the incident on Summary Judgement raised by the defendants surnamed Hitt, Zalduondo, Joselyn and Child, the Tribunal concludes that these are facts duly established and over which there exist no controversy:

1- That the plaintiff bases her claim on the alleged simulation of the contract effected through public deed #129, of October 19, 1935 before the Notary Public Julio César González, an instrument through which she dispossessed herself of her title over a property denominated "Monte Grande," of Loíza, conveying it Dr. Emilio Alfaro Díaz.

2- That the alleged nullity, according to paragraphs 12 and 13 of the complaint, is based on the fact that the plaintiff sold the said property, "not to Enrique Biascoechea, **as agreed**, but to a one Emilio Alfaro Díaz whom Biascoechea expressly brought for the act, and behind whom he hid himself to effect the doubtful transaction

by which he was dispossessing a defenseless widow of a property ...." (underscores ours).

3- That the agreement referred to by the complaint and which preceded the sale now questioned, was not recorded in the Registry of Property, nor there appears from the records of the said property any note or mention over the same that could constitute a notice to subsequent acquirers.

4- That the co-defendants are the owners of a lot segregated from the property named "Monte Grande", which trey acquired from a previous owner with his title recorded and who, accordingly could validly convey the ownership of the lot.

5- That the said moving co-defendants are third mortgagees protected by the provisions of the Mortgage Law. (Rubio Sacarello vs. Roig, 84 PRR 331, and cases quoted).

There existing no excuse to postpone resolution of the conflict between the plaintiff and the moving co-defendants, a summary judgement is entered dismissing the complaint as to them, with costs to plaintiff.

Register and report.

San Juan, Puerto Rico, April 20, 1966.

(Signed) Wilfrido Roberts
Superior Justice

6- That this appellant in disagreement of the said Summary Partial Judgement, asks review of same from this Hon. Tribunal, assigning the following errors to the Superior Tribunal of Puerto Rico, Chamber of San Juan, and to Hon. Justice Wilfrido Roberts:

FIRST ERROR:- The Hon. Superior Tribunal of Puerto Rico, Chamber of San Juan, and its Justice Hon. Wilfrido Roberts made serious error at law on deciding that the recurred Hitt, Zalduondo, Joselyn and Child "are third Mortgagees, protected by the dispositions of the Mortgage Law. **Rubio Sacarello vs. Roig, 84 PRR 331** and cases there quoted".

SECOND ERROR:- It erred also on entering the Summary Judgement of April 20, 1966, herein recurred of, all in conflict with what it itself decided in its Resolution of February 9, 1965, with the contents of article 34 of the Mortgage Law of Puerto Rico, and more still, with interpretation given that article by this Honorable Tribunal in the case of King v Fernández 30 DPR 592 (English version 30 P.R. Reports 550, 559-60).

THIRD ERROR:- It made serious error on deciding, by way of Summary Judgement and to enter it, material facts in controversy such as that " the agreement referred to by the complaint and which preceded the sale now questioned, was not recorded in the Registry of the Property, nor there appears from the record of the said property any note or mention over the same that could constitute a notice to subsequent acquirers" (Summary Judgement Paragraph 3) all the more when, from the records there appears that she who was litigating with them, had her right recorded in the same registry prior to them.

7- That this plaintiff-recurrent discusses these errors in her Brief on Authorities accompanying herewith, with more ample fundaments at law and quotations, and believing that if the writ of review is not issued, the error made by the Tribunal and Justice recurred will prevail, which would mean to her total loss of her right since under the Summary Judgement entered 37 more of the 44 co-defendants in the original complaint would have a right to dismissal of same as to them.

For the facts herein exposed the plaintiff-recurrent from this Hon. Tribunal hereby prays: That a Writ of Revision be issued to the lower Tribunal, ordering it to send to this, the proceedings in this case and that on its date the Summary Partial Judgement entered by the Tribunal and Justice herein recurred be reviewed and reversed, leaving it without effect.

Canóvanas, P. R.,

April 27, 1966.

(Signed) R. R. Rivera Correa
Attorney of the
Recurrent

CLERK'S CERTIFICATE

I, Joaquín Berríos, Clerk of the Supreme Court of Puerto Rico, DO HEREBY CERTIFY:

That the foregoing is a true and faithful translation, from Spanish into English, of the documents which are stated therein, as the same appear in the record of the above entitled case, under my custody in this office, which translation was prepared by appellant's attorney.

And at the request of the interested party and upon payment of the corresponding fees, I issue these presents under my hand and the seal of this Court.

At San Juan, Puerto Rico, the 27th day of March, 1967.

JOAQUIN BERRIOS
Clerk of the Supreme Court
of Puerto Rico

APPENDIX 2

IN THE SUPREME COURT OF PUERTO RICO

Isidora Somolinos,
Plaintiff-appellant

v. R-66-139 Review

Charles Hitt **et al.**,
Defendants-appellees

Division composed of Mr. Justice Pérez Pimentel, as Chief Judge of Division, Mr. Justice Hernández Matos, Mr. Justice Rigau, and Mr. Justice Davila.

ORDER

San Juan, Puerto Rico, November 18, 1966

The foregoing petition for review is hereby denied.

It was so agreed by the Court as witnesses the signature of the Chief Justice.

Luis Negrón Fernández
Chief Justice

I attest:

Joaquín Berríos
Clerk

(SAME TITLE)

Division composed of Mr. Justice Pérez Pimentel, as Chief Judge of Division, Mr. Justice Blanco Lugo, Mr. Justice Rigau, and Mr. Justice Ramírez Bages.

ORDER

San Juan, Puerto Rico, February 10, 1967

The foregoing motion for retention of mandate is hereby denied.

It was so agreed by the Court as witnesses the signature of the Chief Justice.

Luis Negrón Fernández
Chief Justice

I attest:

Joaquín Berríos
Clerk

CLERK'S CERTIFICATE

I, Joaquín Berríos, Clerk of the Supreme Court of Puerto Rico, DO HEREBY CERTIFY:

That the foregoing is a true and faithful translation from Spanish into English of the Orders rendered by the Supreme Court of Puerto Rico in the above-entitled case on November 18, 1966 and February 10, 1967, respectively, as the same appear in the record which is under my custody in this office.

IN WITNESS WHEREOF and at the request of the interested party and upon payment of the corresponding fees in internal revenue stamps, I issue these presents under my hand and the seal of this Supreme Court.

San Juan, Puerto Rico, March 14th, 1967.

JOAQUIN BERRIOS
Clerk of the Supreme
Court of Puerto Rico

APPENDIX 3

IN THE SUPREME COURT OF PUERTO RICO

ISIDORA SOMOLINOS

PLAINTIFF-APPELLANT

Vs.

CHARLES M. HITT, ARTHUR ZALDUONDO, ROBERT JOSELYN AND ROBERT CHILD,

Defendants,

and

THE SUPERIOR TRIBUNAL CHAMBER OF SAN JUAN, HON. WILFRIDO ROBERTS, JUSTICE,

APPELLES.

No. R 66-139

REVIEW

MOTION ON RECONSIDERATION

To the Honorable Tribunal:

Before you know comes the Plaintiff-Appellant by her undersigned attorney and respectfully ALLEGES:

1- That on this date, November 21, 1966 she received by mail the report of the Resolution entered by this Honorable Tribunal in the case above entitled on the 18th of the same month and which was deposited in the Post Office of San Juan on the same 18th of November, 1966, denying the review sought.

2- That the petition of review is based on a case of this superiority, King v Fernández 30 P.R.R. 550, which has not been reversed and in which all that is done is to interpret to its letter and correctly Article 34 of the Mortgage Law, as it has been commented by the authors; whereas and in compliance with the constitutional clause of equal protection of the laws, the Plaintiff-Appellant has a clear right to have this Honorable Tribunal annul the appealed Summary Sentence, leaving in force the first Resolution of the lower Tribunal by which a correct application of the principle was made.

3- That anyhow, the problem dealt with in the petition in this case, is one which, as said by another Superior Justice of Puerto Rico to whom the same was submitted in another case, simultaneously with the one of Somoliones v Sueca, constitutes a "challenge to the studious of Law" and for the same reason has sufficient merits to justify that this Superiority consider it and solve it on its merits, clearing a situation on the interpretation of the matter on third mortgagees, which is becoming more confused every time among those in the practice of law.

WHEREAS from the Honorable Tribunal respectfully she begs that it reconsider and leave without effect its Resolution in this case, dated November 18, 1966 and enter in its place another ordering issuance of the Writ of Review sought, and on its date, the important question set forth be discussed on its merits by the parties.

Canóvanas, Puerto Rico,
November 21, 1966.

(Signed): R. R. Rivera Correa
Attorney for the
Plaintiff-Appellant

Notified with copy to the Lcdo. Jorge Souss, Box 3922, San Juan, P. R., and to Hon. Wilfrido Roberts, Superior Tribunal, San Juan, Puerto Rico, this 21st day of November 1966.

(Signed) R. R. Rivera Correa

APPENDIX 4

IN THE SUPREME COURT OF PUERTO RICO

Isidora Somolinos,

Plaintiff-appellant

v. R-66-139 Review

Charles Hit **et al.,**

Defendants-appellees

Division composed of Mr. Justice Pérez Pimentel, as Chief Judge of Division, Mr. Justice Hernández Matos, Mr. Justice Rigau, and Mr. Justice Dávila.

ORDER

San Juan, Puerto Rico, January 23, 1967

The foregoing motion for reconsideration is hereby denied.

It was so agreed by the Court as witnesses the signature of the Chief Justice.

Luis Negrón Fernández
Chief Justice

I attest:

Joaquín Berríos
Clerk

CLERK'S CERTIFICATE

I, Joaquín Berríos, Clerk of the Supreme Court of Puerto Rico, DO HEREBY CERTIFY:

That the foregoing is a true and faithful translation from Spanish into English of the Order rendered by the Supreme Court of Puerto Rico in the above-entitled case on January 23, 1967, as the same appear in the record which is under my custody in this office.

IN WITNESS WHEREOF and at the request of the interested party and upon payment of the corresponding fees in internal revenue stamps, I ssue these presents under my hand and the seal of this Supreme Court.

San Juan, Puerto Rico, March 28th, 1967

Joaquín Berríos
Clerk of the Supreme
Court of Puerto Rico

APPENDIX 5

IN THE SUPERIOR TRIBUNAL OF PUERTO RICO CHAMBER OF SAN JUAN.

ISIDORA SOMOLINOS,

Plaintiff,

vs.

JUANA SUECA et als.,

Defendants.

Civil Case #62-8581

On:

ANNULMENT AND REVINDICATION

PARTIAL SUMMARY JUDGEMENT

In accord with the stage of the pleadings and considering the documental evidence offered by the parties in the incident on Summary Judgement raised by the Defendants surnamed Hitt, Zalduondo, Joselyn and Child, the Tribunal concludes that these are facts duly established and over which there exists no controversy:

1- That the plaintiff bases her claim on the alleged simulation of the contract effected through public deed #129, of October 19, 1935 before the Notary Public César González, an instrument through which she dispossessed herself of her title over a property denominated "Monte Grande", of Loíza, conveying it to Dr. Emilio Alfaro Díaz.

2- That the alleged nullity, according to paragraphs 12 and 13 of the complaint, is based on the fact that the plaintiff sold the said property, "not to Enrique Biascoechea, **as agreed,** but to a one Emilio Alfaro Díaz, whom Biascoechea expressly brought for the act, and behind whom he hid himself to effect the doubtful transaction by which he was dispossessing a defenseless widow of a property....." (underscore ours).

3- That the agreement referred to by the complaint and which preceded the sale now questioned, was not recorded in the Registry of the Property, nor there appears from the records of the said property any note or mention over

the same that could constitute a notice to subsequent acquirers.

4- That the co-defendants are the owners of a lot segregated from the property named "Monte Grande", which they acquired from a previous owner with his title recorded and who, accordingly could validly convey the ownership of the lot.

5- That the said moving co-defendants are third mortgagees protected by the provisions of the Mortgtge Law. (Rubio Sacarello vs. Roig, 84 PRR 331, and cases quoted).

There existing no excuse to postpone resolution of the conflict between the plaintiff and the moving co-defendants, a summary judgement is entered dismissing the complaint as to them, with cost to plaintiff.

Register and report.

San Juan, Puerto Rico, April 20, 1966.

(There is a Note on Notification to the other parties).

CLERK'S CERTIFICATE

I, Joaquín Berríos, Clerk of the Supreme Court of Puerto Rico, DO HEREBY CERTIFY:

That the foregoing is a true and faithful translation, from Spanish into English, of the document which is stated therein, as the same appear in the record of the above entitled case, under my custody in this office, which translation was prepared by appellant's attorney.

And at the request of the interested party and upon payment of the corresponding fees, I issue these presents under my hand and the seal of this Court.

At San Juan, Puerto Rico, the 27th day of March, 1967.

Joaquín Berríos
Clerk of the Supreme
Court of Puerto Rico

APPENDIX 6

MORTGAGE LAW OF PUERTO RICO

Article 731:-

"After this law shall go into effect no document or instrument which has not been recorded in the registry whereby rights subject to record under said law, are constituted, transferred, acknowledged, modified or discharged, shall be admitted in ordinary or special courts or tribunals, in councils or in the offices of the Government, if the purpose of the presentation should be to enforce to the prejudice of a third person a right which should have been recorded.

Notwithstanding the provisions of the foregoing paragraph, an unrecorded document which should have been recorded may be admitted to the prejudice of a third person, if the only purpose of the presentation shall be to corroborate a subsequent instrument which may have been recorded. Such an instrument may aslo be admitted to record when presented for the purpose of securing the annulment and consequent cancellation of a record which prevents the record thereof.

Laws of Puerto Rico Annotated, Title 30, Section 731, Page 862.

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Article 732:-

"In order to facilitate compliance with the provisions of the foregoing section by owners who hold no written title of ownership, whatever be the period of their acquisition, they shall be granted the power to record their right upon proving their possession to the satisfaction of the judge of first instance of the district in which the property may be situaded, with a hearing of the representative of the department of public prosecution and the citation of the contiguous owners, if it is sought to record the full ownership, and of the owner or other participants in the ownership if it sought to record a property right.

If the property should be situated in a town or district in which there is no judge of first instance, the proceedings may be had before the municipal judge at which the representative of the department of public prosecution shall be heard.

The intervention of said reoresentative shall be limited to a determination of wether the formalities prescribed by law are observed in the proceedings.

Laws of Puerto Rico Annotated, Title 30,
Section 732, Page 864.